IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.347 of 1999

Date of decision: 16.3.2006

State of Himachal Pradesh Appellant

Versus

Chanderesh Kumar Respondent

Coram:
The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ?

For the appellant(s): Mr.J.S.Guleria, Law Officer

For the respondent(s): Mr.G.D.Verma, Senior Advocate,
with Mr.B.C.Verma, Advocate

Deepak Gupta,J.(Oral)

This appeal by the State is directed against the judgment of the learned Additional Sessions Judge, Solan in Criminal Appeal No. 12-A/10 of 1997, decided on 3.7.1999 whereby he has accepted the appeal filed by the accused and set aside the judgment of the learned Sub Divisional Judicial Magistrate, Arki convicting the accused of having committed the offence under Section 61 (1) (a) of the Punjab Excise Act as applicable to the State of Himachal Pradesh and sentencing him to undergo simple imprisonment for six months and fine of Rs.2,000/-.

The prosecution case was that on 5.3.1996 the police party was present at bus stand, Darlaghat in connection with the investigation of some other case under the Excise Act.

During the course of investigation of that case Constables Virender Kumar and Mansha Ram stopped the accused Chandresh Kumar and on search of his bag 6 bottles of Director Special Whisky and 3 bottles of Bag Piper Whisky were recovered. One sample each of Director Special and Bag Piper were taken and thereafter investigation was done and the accused was challaned. The accused was convicted by the learned trial court.

The accused filed an appeal. The learned lower appellate court has allowed the appeal filed by the accused. The appeal filed by the accused was allowed mainly on the ground that no independent witness of the locality was joined nor the investigating officer has stated that he attempted to join any such independent witness even though the investigating officer stated that the accused was brought to police station in truck which had a driver and conductor. Therefore, two independent witnesses at least were available, but they were not associated with the search and seizure operation. The trial court found that though as per the FIR the appellant was found to be in conscious and exclusive possession of 6 bottles of Director Special and 3 bottles of Bag Piper whisky, but in the charge framed by the trial court it had been mentioned that the appellant was found in conscious and exclusive possession of 6 bottles of Aristocrate Whisky without licenses. According to the

learned Sessions Judge this was a grave error in the charge. Whereas in the FIR it was mentioned that the recovery had taken place at 3.30 a.m. in the charge it was stated as 3.50 a.m. Even if it is held that the trial court has been negligent in recording the time wrongly, I find that there is grave illegality committed by the trial court. Initially in the charge sheet it was mentioned that the accused was found to be in conscious/exclusive possession of 6 bottles of liquor, Aristocrate Whisky without license. Thereafter this was changed to the word Director Special Whisky and 3 bottles of Bag Piper.

In view of the interpolation in the charge sheet the Registrar (V) was asked to hold an inquiry and his prima facie conclusion is that this interpolation was done by the Magistrate herself. This interpolation could be traced only because the accused, fortunately for himself and unfortunately for the Judicial Officer concerned, had obtained certified copy of the charge sheet before the decision of the case. The charge was framed on 25.9.1996. The accused obtained duly certified photocopy on 9.4.1997. The interpolation was made later on by the trial court. It is thus clear that the trial court convicted the accused of an offence with which he had not been charged. The accused has rightly been acquitted.

In view of these facts I feel that no interference is called for and the appeal is dismissed. Bail bonds of the accused are discharged.

March 16, 2006(K) (Deepak Gupta), Judge